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SPECIAL REPORT ON USE OF SECLUSION BALTIMORE CITY JUVENILE JUSTICE CENTER SEPTEMBER, 2009

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Issue Monitored:	Use of Seclusion at Baltimore City Juvenile Justice Center, July – September 2009
Date of Report:	September 2009

EXECUTIVE SUMARY

This report discusses the Baltimore City Juvenile Justice Center's (BCJJC) practice of isolating youth in their rooms for up to 23 hours a day and five days total under the terms of a "Behavioral Health Management Contract." The room isolation program continued from July to late August, 2009 and was implemented to control youth who were frequently involved in assaults at the Center.

The Department of Juvenile Services referred to the practice as "social separation." During the first week of the program in mid-July, youth were kept in locked cells for up to five days except for a few hours out for recreation, showers, or time in the Day Room.[1] Youth subjected to the program in late July and August were not restricted to their rooms by mechanical measures, i.e., a locked door, but they were prevented from leaving the room by coercive measures. If a youth attempted to leave the room before the "social separation" term was completed, he would be placed in locked-door seclusion.[2]

Regardless of the label applied to the practice by the Department of Juvenile Services, this program was equivalent to seclusion of youth in violation of state law and Department of Juvenile Services policies on seclusion. Those policies require that, in order to be placed in seclusion, youth must pose a threat of imminent danger to themselves or others. The youth subjected to this program did not satisfy that standard.

The so-called "behavior management" program was not developed by professionals with expertise in the design of behavior modification programs, and no training was provided to staff implementing the program.[3] Extended room isolation[4] is not an effective behavior management or modification approach, and a significant body of research shows it to be a practice that risks psychological harm to youth.

The room isolation program had no legitimate purpose except to enforce (youth) compliance with directions – a purpose also prohibited by DJS policy. Since no legitimate or legal justification for the program can be articulated, it amounts to using seclusion for punishment of youth, in violation of Maryland law.

The Department says the program "for now, is on hold" because the program "was rolled out…too quickly and without the more comprehensive training and

[1] See pp. 6-8 of this Report.

[2] Behavioral Health Management Plans for K, J et al. The plans/contracts were nearly identical for all youth in the program.

[3] See pp. 12-13 of this Report.

[4] For purposes of clarity, we use the term "room isolation" throughout the report to describe DJS's practice of confining a youth alone in an unlocked room from which the youth is prevented from leaving by physical or coercive means for extended periods of time (*i.e.*, longer than 60 minutes).

communication we would have preferred."[5] Nevertheless, it continues to defend the program as necessary, appropriate, and legal.[6]

This program should not be defended, and the Department must provide assurances that it will not revive it or any other behavior management program that involves extended periods of isolation of youth.

We understand and respect the Department's efforts to reduce violence at the Baltimore City Juvenile Justice Center and to protect youth from assaults by other youth. But programs aimed at reducing violence must respect all youths' rights to be treated within the bounds of the law while in the care and custody of the Department of Juvenile Services.

EVIDENCE

PERSONS INTERVIEWED: DJS Administration, DJS staff, Hope Health staff, youth (6)

DOCUMENTS REVIEWED:

1. Unit Logs, Units 40 and 41, July 2009
2. Seclusion Observation Documents (door sheets) July – August, 2009
3. E-mail communications between JJMU and DJS staff, July – September 2009
4. Investigation of Allegation of Violation of Seclusion Policy, Office of the Inspector General DJS, September 11, 2009
5. Letter from Abbie Flanagan, Office of the Public Defender Juvenile Protection Division to Robin Brady-Slifer, Office of the Inspector General DJS, August 19, 2009
6. BCJJC Master Control Seclusion Log July – September 2009
7. BCJJC youth Mental Health Behavioral Plans (aka Mental Health Behavioral Contracts)
8. DJS/OIG Incident Reports (IR 75134, IR 75378, IR 76263, IR 75341, IR 77115, IR 75293, 76276)
9. Video Review, IR 76263
10. BCJJC Guarded Care Plans July – September 2009

STANDARDS

Md. State Govt. Code Ann. §9-227 (b) (2) (i) *The Department shall: adopt regulations applicable to residential facilities it operates that: prohibit the use of locked door seclusion and restraints as punishment and describe the circumstances under which locked door seclusion and restraints may be used.*

Md. Dept. of Juvenile Services Policy and Procedure RF-02-07 Use of Crisis Prevention Management (CPM) Techniques Policy *Employees of the Department of Juvenile Services (DJS) and DJS-licensed private residential facilities shall establish and*

[5] Letter from Sheri Meisel, DJS, to Marlana Valdez, JJMU, September 28, 2009.

[6] Ibid.

maintain a safe and orderly environment within each facility. Crisis Prevention Management (CPM) techniques may be used only by staff who have completed a DJS-approved training program and who provide documentation of completion of semi-annual refresher training. Crisis Prevention Management techniques may be utilized only to: protect or prevent a youth from imminent injury to self and others or to prevent overt attempts at escape. In the event that a youth remains an imminent threat to self or others and the youth's behavior has escalated, restraints or seclusion may be used as a last resort. Employees may not use CPM techniques, including restraints or seclusion, as a means of punishment, sanction, infliction of pain or harm, demonstration of authority, or program maintenance (enforcing compliance with directions).

RF-02-07 (4) (b) Discontinuation of Restraint or Seclusion. *A youth shall be released from restraint or seclusion when the Team Leaders indicates that the youth is calm, or the restraint is no longer needed to protect or prevent the youth from imminent injury to self or others, or to prevent overt attempts at escape.*

RF-02-07 (3) (p) *Social Separation means the supervised placement of a youth in his/her room for a non-punitive "cooling-off" period of no more than 60 minutes, which provides an opportunity for a youth to calm down and the situation to defuse. The door of the room shall remain opened and unlocked.*

Md. Dept. of Juvenile Services Policy and Procedure RF-01-07 Seclusion Policy *The Department of Juvenile Services (DJS) shall maintain a safe, secure area to isolate or seclude youth who present an imminent threat of physical harm to themselves or other individuals, have not responded to less restrictive methods of control or for whom less restrictive measures cannot reasonably be tried, or have escaped or are attempting to escape. The duration of seclusion shall be determined by the youth's level of risk, as indicated by his or her behavior and statements.*

RF-01-07 (3) (c) *Seclusion means the placement of a youth in a locked room where a youth is kept for a period of time during waking hours.*

RF-01-07 (4) (a) (7) *Seclusion shall not be used as punishment and is limited to youth who: (i) Present an imminent threat of physical harm to themselves or other individuals; (ii) Have not responded to less restrictive methods of control or for whom less restrictive measures cannot reasonably be tried; or (iii) Have escaped or are attempting to escape.*

RF-01-07 (4) (a) (8) *The length of seclusion shall not be a pre-determined time frame and shall be based on the criteria identified in section 4 (a) (7) of this policy. When these conditions are no longer present, youth shall be released from seclusion.*

RF-01-07 (4) (a) (24) (vii) *In instances where an incident of seclusion lasts longer than 8 hours, the Facility Administrator or designee shall…ensure that the youth is removed from seclusion after 48 hours unless a written declared emergency is issued by the Facility Administrator and approved by the Assistant Secretary for Residential Services.*

COMAR 16.18.02.03 Use of Locked Door Seclusion. *(A) A facility employee may not place a youth in locked door seclusion as punishment.*

COMAR 14.31.06.03 *"Seclusion" means the confinement of a resident alone in a room from which the resident is physically prevented from leaving.*

COMAR 14.31.06.03 *"Time out" means the removal of a resident to a supervised area, which is unlocked…to prevent egress for a limited period of time during which the resident has an opportunity to regain self-control and is not participating in program activities or receiving program personnel support*.

Md. Dept. of Juvenile Services Policy and Procedure RF-10-07 Behavior Management Program for DJS Detention Facilities *The Department of Juvenile Services (DJS) shall utilize an incentive-based level system of behavioral management for detained youth which promotes the reinforcement of pro-social behaviors. The goal of the system is to emphasize pro-social interactions while consistently encouraging positive behaviors and modifying non-compliant, maladaptive behaviors. Employee training and methods of quality assurance will ensure the integrity and fair application of the behavior management program throughout DJS Detention Facilities.*

Settlement Agreement between the State of Maryland and the United States Department of Justice ¶ III.B-1.v *Behavior Management Program. The State shall develop and implement an effective behavior management program at the facility throughout the day, including during school time and shall continue to implement the behavior management plan. The State shall develop and implement policies, procedures and practices under which mental health staff provide regular consultation regarding behavior management to direct care and other staff involved in the behavior management plans for youth receiving mental health services, and shall develop a mechanism to assess the effectiveness of interventions utilized.*

HISTORY

In July, 2009, DJS Headquarters staff, BCJJC staff and staff from Hope Health, the mental health services provider at BCJJC, implemented a behavioral modification program for certain targeted youth at BCJJC. The participants in this program were required to sign a Mental Health Behavioral Plan or Contract (MHBP). The plan stated that if the youth failed to comply "with the facility norms and operating procedures," he would be immediately placed in his room for indefinite periods of time, with 23 hours in the room and only one hour out of the room for solitary exercise and a shower during the first day.[7] A number of youths reported the implementation of this plan to the Monitor and to the Public Defender, referring to the practice as "23/1."

Although the Department has an extensive policy on Behavior Management Programs (RF-10-07), the program proposed and implemented in July 2009 was completely separate and apart from that DJS policy. It was imposed upon a small number of youth specifically targeted for the program. According to DJS staff, youth placed in this special program were those who consistently fought with other youth.[8]

[7] Behavioral Health Management Plans for K, J et al. The plans/contracts were nearly identical for all youth in the program.

[8] The Program called for the subject youth to first be placed on a Guarded Care Plan which outlined current behavioral problems, triggers for those behaviors, weekly behavioral goals, incentives, and weekly progress reports. Youth whose behavior did not improve under the Guarded Care Plan would be placed on a Mental Health Behavioral Contract. However, file reviews revealed that only two of the youth involved in the

The DJS Policy on facility-wide Behavior Management Plans does not allow the use of seclusion, even for major rule infractions.

Once youth were placed in room isolation, they could only be released by following a step-down program lasting four to five days. [9]

TIMELINE

During July, documents reveal that at least four youths were subjected to the new program – K., M., T., and F.[10]

1. K was restrained and taken to his room at 1:00 p.m. on July 15 and remained until the morning of July 20. He was returned to room isolation on July 23 (release time not documented) and again on July 28 until after 5:00 p.m. August 2.

   The Seclusion Observation Forms documenting K's period of room isolation show that he was likely locked in his room for over 4 ½ days between July 5 and 20.

   The Duty Officer signed the Seclusion Observation Form for K at 1:00 pm on July 15, writing "being restrained and taken to room." The Seclusion Observation Forms were not marked as "Social Separation," and over the next four days, staff written observations implied that his door was locked. These included:

   - "Banging on door, yelling" (12:38 pm, 7/17)
   - "Yelling through door" (6 am – 2 pm shift 7/17)
   - "At window (of door)" (12:48 pm 7/19)

   K was released from his room for:
   - 1 hour of solo recreation (7/17)
   - 1 hour recreation (7/18)
   - 1 hour recreation and time in Day Room (7/19)

2. M was held in room isolation from 1:00 p.m. on July 15 until sometime on the morning of July 20 (no documentation of release time), over 4 ½ days.

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program had complete Guarded Care Plans with regular reviews. Apparently, this intermediate level of intervention was skipped altogether for most youth.

[9] The plans developed in July did not specify how long the room isolation would last, but youth isolated under the program in July remained in room isolation for 4-5 days. Plans implemented in August included timelines for the step-down process over five days.

[10] First letters of youths' first names are used to protect their confidentiality.

3. T was held in room isolation from 5:50 p.m. on July 15 until sometime on July 21 (no documentation of release time), (over five days); returned to room isolation on July 22 until at least July 24, returned to room isolation on July 28 until at least August 1.

4. F was placed in room isolation on July 17. His release time is not documented.

The Seclusion Observation Forms for youth isolated between July 15 and July 22 do not indicate whether they were held in locked door seclusion or unlocked door room isolation. However, youth and direct care staff interviewed said that during this time period, staff locked youth in their rooms except for the one to two hours daily they were allowed out.

Indeed, the DJS Office of Inspector General Investigative Report on the program reached the same conclusion:

> *Observation forms for K…, T.., and M… were reviewed from 07-15-09 to 07-20-2009. Seclusion lasted several days because youth remained aggressive and refused to process with administrative, supervisory, and mental health staff.*[11]

Examination of the Seclusion Observation Forms revealed that youth did not "remain aggressive" or an imminent threat as the OIG report concluded. For example, over the 4½ days he was held in room isolation, M's Seclusion Observation Forms show that after the first hour in seclusion, he was consistently:

- Lying down or sitting calmly
- Withdrawn, doesn't want to talk
- Reading
- Sleeping
- Standing at door, or
- Cleaning room[12]

Departmental policy requires that the Facility Administrator declare an emergency in writing before any youth is held in seclusion beyond 48 hours. This was not done in any of these cases.

On July 23 (in an e-mail to Erica Crosby, Assistant Superintendent BCJJC, Wallis Norman, Superintendent BCJJC and Aisha Hays, Hope Mental Health Director), Wendy Estano, Director of Quality Improvement for DJS, stated upon reviewing the Sample Mental Health Behavior Contract that had been implemented, "Just will need to change seclusion to social separation. We can't lock the door unless there is a legitimate safety issue. If the youth who has the assaultive background does come out of his room while

[11] DJS Office of Inspector General Investigative Report on Baltimore City Juvenile Justice Center, September 11, 2009, p. 3.

[12] For a period of 30 minutes on the 3rd day of his room confinement, staff noted that M was cursing and using foul language in anger.

on social separation and refuses directives to stay in, we can lock the door but then start seclusion paperwork at that time."

On July 24, the Juvenile Justice Monitor raised the issue of the extended seclusions and room isolations with Assistant Superintendent Erica Crosby, and requested copies of the Mental Health Behavioral Plans for M and F. Copies of behavioral plans for M., T., and F. were provided to the Monitor on July 31. Each of those contracts clearly requires that subject youth be placed in "seclusion."

In August, at least six additional youth were placed in room isolation under the Mental Health Behavioral Plans (two of whom had already been subjected to the practice in July).

1. T was placed in room isolation at 4 p.m. on August 9 until 10:20 a.m. on August 12.

2. F was in room isolation from August 16 at 10:00 p.m. until August 19 at 6:00 p.m.

3. K was in room isolation from August 16 until August 20.

4. Another youth, D, was in room isolation from August 1 to August 5, August 9 to August 12, and August 13 to August 17 (Master Control seclusion log notes the reason as "contract").

5. Youth A was in room isolation from August 13 to August 14 (Master Control seclusion log notes the reason as "contract violation") and from August 16 until August 21.

6. Youth N was in room isolation from August 16 until August 21.

During the room isolations between July 15 and 22, Units Logs and Seclusion Door Forms indicated that youth remained in their rooms except for 1 hour of solitary recreation and a shower each day. In late July and August, some youth were released from their rooms more often, approximately 3 hours a day (recreation, free time in Day Room, and meal in dining room). No records indicate that any youth in room isolation ever attended school as the Contracts provided.

Most youth subject to the program in August appear to have been in locked door seclusion for approximately one day and then moved to unlocked door room isolation, but Seclusion Observation Forms are not clear on this question.

For example, the Mental Health Behavior Plan for A said, "(A)fter his first 24 hours in seclusion, (A) will return to his room on social separation, but MUST remain in his room at all times. The following is (A's) plan for the remainder of his detainment at BCJJC: Daily – (A) will be permitted one hour of individual recreation, separate from the unit."[13]

[13] Mental Health Behavior Plan for AW, August 12, 2009.

The Juvenile Justice Monitor met with the facility Superintendent on August 7, 21 and 25 to discuss violation of seclusion and social separation policies. On August 19, the Office of the Public Defender formally notified the Department of the seclusion violations by letter to Robin Brady-Slifer, DJS Office of the Inspector General.

Following receipt of the Office of Public Defender letter, the DJS/OIG investigated the practice. The report it released on September 11, 2009, found no violations of policy in the implementation of the Mental Health Behavioral Contracts.

DJS insists that the room isolation program was both necessary and appropriate. However, Deputy Secretary Sheri Meisel wrote on September 28 that the program had been placed on hold, because "the social separation procedure was rolled out by the facility too quickly and without the more comprehensive training and communication we would have preferred."[14] Her letter did not indicate whether the program might be revived.

DISCUSSION

SECLUSION v. SOCIAL SEPARATION

Administrators at BCJJC choose to call the separation of youth from their peers by confinement in their cells "social separation." The Department explained that the practice is not "seclusion" because the doors to the rooms were not locked.[15] Locked-door seclusion of youth is covered by multiple state laws, standards, and policies. Many of these laws were violated if the program involved "seclusion."

The label applied to the practice is irrelevant. The circumstances of the isolation determine whether this practice, in fact, amounts to "seclusion."

One conclusion is not debatable. The practice is not "social separation." DJS policy defines "social separation" as:

> *the supervised placement of a youth in his/her room for a non-punitive "cooling-off" period of no more than 60 minutes, which provides an opportunity for a youth to calm down and the situation to defuse. The door of the room shall remain opened and unlocked.*[16]

The Maryland Standards for Juvenile Detention Facilities also state that in-room social separation may only be used as an opportunity for a "time out" for a youth.[17] Maryland COMAR standards define "time out" as "the removal of a resident to a supervised area, which is unlocked…to prevent egress for a limited period of time during

[14] Letter from Sheri Meisel, DJS, to Marlana Valdez, JJMU, September 28, 2009.

[15] Ibid.

[16] Department of Juvenile Services Policy RF-02-07 (3) (p)

[17] Maryland Standards for Detention Facilities, Sec. 5.3.7

which the resident has an opportunity to regain self-control and is not participating in program activities or receiving program personnel support.[18]

A plain reading of these policies makes it clear that "social separation" is meant to be very brief – just enough time to allow the child to calm down and never more than one hour. Social separation was not intended to be a five day room isolation including periods of 23 hours in a cell.

Nevertheless, DJS has defended the practice by ignoring its own 60-minute limit on social separation. The agency appears to believe that it they may keep youth in their cells for an open-ended time period over multiple days as long as their doors are unlocked and the youth receive one hour of recreation daily.

The Department has offered a hyper-technical interpretation of its policies on seclusion by arguing that if the door is not locked, the youth is not secluded.[19] Youth in this program were restricted to their cells by coercive measures and threat of force. In fact, most definitions of "seclusion" do not center on the state of the lock on the door, but on the coercive aspects of the practice. COMAR defines "seclusion" as "the confinement of a resident alone in a room from which the resident is physically prevented from leaving."[20] The definition of seclusion found in the federal Children's Health Act of 2000, applicable to community-based psychiatric facilities for children, is identical to the COMAR definition.[21]

CONSEQUENCES OF EXTENDED ISOLATION

Separation of prisoners from other prisoners is a practice as old as the earliest penitentiaries, where penitence meant silent, solitary contemplation and repentance. The practice may also be called seclusion, solitary isolation, time-out, room confinement, and administrative segregation. The pain that may be inflicted by solitary isolation is generally well known. The UN Committee Against Torture (CAT) has criticized isolation practices in different parts of the world and has, for example, recommended that 'the use of solitary isolation be abolished, particularly during pre-trial detention…'[22]

It is a particularly cruel practice to be inflicted upon youngsters because, for them, time moves more slowly than for adults. Isolation is prohibited under the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and it is prohibited to be used as punishment for juveniles by statute and policy in Maryland.

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[18] COMAR 14.31.06.03

[19] Letter from Sheri Meisel, supra.

[20] COMAR 14.31.06.03

[21] 42 U.S. C. §290ii(d)(2).

[22] Peter Scharff Smith, *Solitary Confinement – History, Practice and Human Rights Standards,* Prison Service Journal, January 2009.

The most recent report of the CRIPA monitor explains that "the practice of isolating (i.e., placing them behind a locked door, by themselves) youth who commit major rule violations does not have support in the research on creating long-term behavior change in adolescents."[23] The Monitor's report further says that "[i]n general, youth should be held behind a locked door only when a legitimate safety concern exists. Otherwise, the downsides of this practice (i.e., the risk of self-harm dramatically increases; after an initial cooling off period, youth tend to get more aggravated when excluded from the general population; absent specific programming youth do not learn anything from being isolated) far outweigh the benefits."[24]

Indeed, DJS staff was aware that the room isolation program had the potential to psychologically damage youth. All Behavioral Health Management Plans provided that youth could be released from the plan by a mental health clinician at any point "if he is decompensating[25] or regressing as a result of the constraints within this plan."[26]

The program did not confine youth to their cells because of threat of imminent injury to self or others. In her last report the CRIPA monitor had already advised the Department that long term isolation does not create behavior change and cannot be justified as a behavior modification technique. So the purpose of the program is not clear. Primarily, it was a means of enforcing compliance with staff directions among difficult youth. DJS policy specifically prohibits the use of seclusion for purposes of "program maintenance (enforcing compliance with directions)."[27]

THE PROGRAM AS BEHAVIOR MODIFICATION

The behavior modification program that resulted in the violations discussed was created outside the bounds of statutes and policy which govern the treatment of people who are incarcerated by the state. Simply renaming a prohibited practice – calling seclusion "social separation" or "behavior modification"- does not authorize the state to unduly restrict youth's freedom.

In fact, youths' "interest in freedom from unreasonable bodily restraint includes freedom from unnecessary bodily restraint through mechanical devices as well as unreasonably restrictive conditions of confinement. Unreasonably restrictive conditions of confinement are those which unduly restrict the juveniles' freedom of action and are

[23] Fourth Monitor's Report, at page 19.

[24] Fourth Monitor's Report, at page 21.

[25] "Decompensation" occurs when, in response to stress, a person's routine functioning progressively deteriorates, eventually resulting in loss of self-control and inability to maintain normal psychological defenses, sometimes including psychosis. See Bruce Porter, New York Times, "Is Solitary Confinement Driving Charlie Chase Crazy? Nov. 8, 1998.

[26] Behavioral Health Management Plan of JD, D, et al.

[27] DJS Policy RF-02-07

not reasonably related to legitimate security or safety needs of the institution."[28]

Similarly, the State does not have authority to place incarcerated persons in untested behavioral modification programs. In a case in which the federal court ruled that a behavior modification program violated the substantive due process rights of women prisoners in Kentucky, the judge said, "[p]ersons convicted of crimes deserve to be punished, but this does not give the state license to make prisoners objects of unguided behavior control experiments."[29]

The room isolation program that was imposed here was created by individuals who do not possess the requisite training and experience to design a complex behavior modification program. No behavioral psychologist was involved in the design. The program was not validated by trained, qualified professionals. The staff who implemented the program received no training at all in the operation of the program, nor did the youth who were subjected to it.[30] The program is not specific, nor was it individualized to the needs of the subjects. There is no mechanism in place to monitor and adjust the program based on its results.

The DJS/OIG investigator, in her September 11 Report, said, "[at the onset of these behavioral plans the terminology used was *seclusion* not *social separation* which created confusion amongst staff because there was no detailed training to teach staff the intention of the mental health contracts." The investigator concluded, "Administrative staff and Mental Health staff at BCJJC attempted to implement new strategies within Mental Health Behavior Plans without adequate preparation, review, and training. This led to confusion about the strategies employed and for inconsistent use of the social separation plans. Administrative staff did not carefully review the plans for all youth, but there was no violation of the standards of conduct."

These failures are particularly egregious because the new behavior management program employs, as the primary response to unacceptable behavior, extended solitary confinement, which is one of the most dangerous and highly restricted aversive behavior techniques that occur in institutional settings. While using a dangerous approach, DJS only minimally involved clinicians in the implementation of the program. Youth were visited an average of one time daily by clinicians during their seclusion. Interviews with staff, youth, and review of Behavioral Health Management Plans showed that clinicians were not carefully monitoring and adjusting the program to the needs of each individual youth.

In her most recent report, the CRIPA Monitor discusses Guided Care Plans (GCP), which had been used by DJS and Hope Health to address unacceptable youth behavior. She said, "While the GCP is a solid strategy for addressing youth involved in a

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[28] *Alexander S. By and Through Bowers v. Boyd*, 876 F. Supp. 773, 798 (D.S.C. 1995); *see also R.G. v. Koller*, 415 F. Supp. 2d 1129, 1154-56 (D. Hawaii 2006)(noting that "the use of isolation for juveniles, except in extreme circumstances, is a violation of Due Process.")

[29] Canterino v. Wilson, 546 F. Supp. 174 (W.D. Kentucky 1982)

[30] DJS Office of Inspector General Investigative Report on Baltimore City Juvenile Justice Center, September 11, 2009.

disproportionate number of serious incidents, the plan must be both individualized and specific. The plan should define a baseline (i.e. type and frequency of problem behaviors at the time of the referral), identify the skills the youth needs to develop in order to display more appropriate behaviors, set specific behavioral goals and how progress toward them will be measured, and specify a range of rewards and incentives for youth who meet these goals. GCP's must be reviewed routinely and youth must be given access to rewards if they have earned them in order to have an impact on youth's behavior."[31] This program met none of these requirements.

FINDINGS

1. Between July 15 and July 22, 2009, approximately four youth were held in locked door seclusion for multiple days even though they did not pose a threat of "imminent injury to self or others," in violation of DJS Policies RF-02-07 and RF-01-07 (4)(a)(7) and (8).

2. Between July 15 and July 22, 2009, approximately four youth were held in locked door seclusion for more than 48 hours without a written declared emergency…issued by the Facility Administrator and approved by the Assistant Secretary for Residential Services, a violation of DJS Policy RF-01-07 (4)(a)(24)(vii).

3. Between July 23 and August 21, 2009, youth subject to the Behavioral Health Management Plan were held in unlocked room isolation that was the equivalent of seclusion because of its coercive nature and were not released when they were "calm or the (seclusion)…is no longer needed to protect or prevent the youth from imminent injury to self or others," in violation of DJS Policies RF-02-07 and RF-01-07 (4)(a)(7) and (8).

4. Between July 23 and August 21, 2009, youth subject to the Behavioral Health Management Plan were held in unlocked room isolation that was the equivalent of seclusion. They were held in seclusion for more than 48 hours without a written declared emergency…issued by the Facility Administrator and approved by the Assistant Secretary for Residential Services, a violation of DJS Policy RF-01-07(4)(a)(24)(vii).

5. Between July 23 and August 21, 2009, youth subject to the Behavioral Health Management Plan were held in locked door seclusion for approximately 24 hours following a facility rule violation, before entering the step-down program, in violation of DJS Policies RF-02-07 and RF-01-07 (4)(a)(7) and (8).

6. Because the program has not been shown to be effective for any particular youth, and because no legitimate purpose for the program can be articulated, it amounts to seclusion of youth for punishment, a violation of Md. State Govt. Code Ann. §9-227 (b) (2) (i).

[31] Fourth Monitor's Report, at page 20.

7. Failure to provide any training for staff implementing the program violated DJS Policy RF-10-07 which requires that employees be trained in behavior management programs to ensure integrity and fair application of the program.

CONCLUSION

In an effort to control the most aggressive youth at the Justice Center, DJS developed and implemented an ill-advised "behavior management" program. The centerpiece of the program was the use of room isolation for long periods of time. This program violated Departmental policy and State law, and was potentially harmful to youth in its care.

RECOMENDATIONS

1. Department of Juvenile Services leadership should not utilize the Mental Health Behavior Contract program or any other behavior management or control programs that include extended solitary confinement of youth, whether with or without locked doors.

2. BCJJC should develop "Guarded Care Plans" for youth who exhibit serious behavioral problems that are individualized, identify the problem behaviors and skills youth need to develop, and articulate specific weekly goals and meaningful incentives. The plans should be reviewed on a weekly basis with youth and should incorporate social skill development.

3. Any additional individual behavior modification programs should be developed in consultation with experts in that field.